

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

UNITED STATES OF AMERICA,

Plaintiff,

Case No. 19 CR 2848 JB

v.

VICTOR KEARNEY,

Defendants.

**DEFENDANT VICTOR KEARNEY'S  
ADDITIONAL PROPOSED JURY INSTRUCTIONS**

The Defendant Victor Kearney respectfully requests the Court include the following instructions to the jury and requests permission to submit such additional instructions as may become appropriate. These additional proposed jury instructions are supplemental to previously submitted proposed instructions and are not intended to as a withdrawal, waiver or abandonment of any previous proposed instructions submitted. Defendant renews and does not waive his prior objections and proposed instructions in connection with this Motion to Preserve Right to Jury Trial previously filed in this matter.

- 10. 10<sup>th</sup> Cir. Pattern Jury Instructions (Criminal) §1.16;
- 8. 10<sup>th</sup> Cir. Pattern Jury Instructions (Criminal) §2.93 [modified].

Respectfully submitted:

By: /s/ Paul Linnenburger  
PAUL LINNENBURGER  
Lane + Linnenburger + Lane LLP  
P.O. Box 6622  
Albuquerque, New Mexico 87197  
(505) 226-7979  
Email: paul@attorneyslane.com

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 9<sup>th</sup> day of March 2023, I filed this pleading electronically through the CM/ECF system, which caused the following counsel to be served by electronic means, as more fully reflected on the Notice of Electronic Filing:

Kimberly Brawley  
Sean Sullivan  
United States Attorney's Office  
District of New Mexico  
201 3<sup>rd</sup> Street NW, Suite 900  
Albuquerque, New Mexico 87102

/s/ Paul Linnenburger  
Paul Linnenburger

### **DEFENDANT’S PROPOSED INSTRUCTION NO. 10**

The testimony of a drug abuser must be examined and weighted by the jury with greater caution than the testimony of a witness who does not abuse drugs.

Robert Fiser may be considered to be an abuser of drugs.

You must determine whether the testimony of that witness has been affected by the use of drugs or the need for drugs.

**Source:** 10<sup>th</sup> Cir. Pattern Jury Instructions (Criminal) §1.16.

## DEFENDANT'S PROPOSED INSTRUCTION NO. 11

Your verdict must be unanimous.

Mr. Kearney is charged in Count 1 with a violation of 18 U.S.C. § 371 through the following overt acts:

1. On or about October 23, 2009, **KEARNEY** signed a 2007 U.S. Individual Income Tax Return, Form 1040, failing to report that **KEARNEY** received taxable income from the Mary Pat Abruzzo-Kearney Testamentary Trust B and C.

2. On or about August 3, 2011, **KEARNEY** signed a 2008 U.S. Individual Income Tax Return, Form 1040, failing to report that **KEARNEY** received taxable income from the Mary Pat Abruzzo-Kearney Testamentary Trust B and C.

3. On or about June 17, 2012, **KEARNEY** signed a 2009 U.S. Individual Income Tax Return, Form 1040, failing to report that **KEARNEY** received taxable income from the Mary Pat Abruzzo-Kearney Testamentary Trust B and C.

4. On or about June 17, 2012, **KEARNEY** signed a 2010 U.S. Individual Income Tax Return, Form 1040, failing to report that **KEARNEY** received taxable income from the Mary Pat Abruzzo-Kearney Testamentary Trust B and C.

5. On or about September 6, 2013, **KEARNEY** signed a 2011 U.S. Individual Income Tax Return, Form 1040, failing to report that **KEARNEY** received taxable income from the Mary Pat Abruzzo-Kearney Testamentary Trust B and C.

As to the \_\_\_\_\_ element of Count 1 set forth in Instruction No. \_\_\_\_\_, the government must prove an overt act in furtherance of the conspiracy beyond a reasonable doubt.

The government does not have to prove all of the different acts for you to return a guilty verdict on Count 1.

But in order to return a guilty verdict as to Count 1, all twelve of you must agree upon which of the listed acts, if any, Mr. Kearney committed *and* that he committed at least one of the acts listed above.

The government does not have to prove all of these different acts for you to return a guilty verdict on Count 1.

But in order to return a guilty verdict on Count 1, all twelve of you must agree upon which of the listed acts, if any, the defendant committed *and* that he committed at least one of the acts listed.

**Source:** 10<sup>th</sup> Cir. Pattern Jury Instructions (Criminal) §1.24 (2021)[modified].